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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,170	08/30/2006	Jari Rasanen	0696-0250PUS1	6057

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EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3782

NOTIFICATION DATE	DELIVERY MODE
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06/25/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,170	<b>Applicant(s)</b> RASANEN ET AL.	
	<b>Examiner</b> Gary E. Elkins	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 3 and 4, “its mouth” and “the skirt” each lack antecedent basis in the claim.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn (US 2006/0191940) (figs. 7-9 embs.) in view of Kleemola (US 5,236,120). Heyn discloses all structure of the claimed package except formation of the package from a fibre-based material. Kleemola teaches that it is known to make a sealed package using fiber-based material. It would have been obvious to substitute a fiber based material for the molded plastic in the package of Heyn as taught by Kleemola since fiber based materials are readily available and cheaper to produce.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 above, and further in view of Maruhashi et al (US 4,551,366). Modified Heyn evidences all structure of the claimed package except an inner oxygen barrier layer. Maruhashi

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et al teaches that it is known to make a sealed package with an oxygen barrier layer to allow packaging of contents sensitive to oxygen. It would have been obvious to include an oxygen barrier layer in modified Heyn as taught by Maruhashi et al to allow the package to be used for oxygen sensitive contents.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hawley (US 3,095,132). Modified Heyn evidences all structure of the claimed package except a stacking recess in the lid. Hawley teaches that it is known to make container lids on containers having tapered sidewalls with a central recess to facilitate stacking multiple like containers on top of one another. It would have been obvious to make the lid in Heyn with a stacking recess as taught by Hawley to prevent shifting of stacked containers.

6. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Tupper (US 2,998,158). Modified Heyn evidences all structure of the claimed package except either a central recess which allows a friction reclosure of the lid after opening (cl. 7) or a tear strip around the lid near the rim for opening the package. Tupper teaches that is known to make a cup style package with a lid having a central recess and an outer tear strip formed by a separation perforation line (21, 22). With respect to claim 7, it would have been obvious to make the lid in modified Heyn with a central recess to allow a friction reclosure of the lid upon opening as taught by Tupper to retain the lid closed after opening. With respect to claim 9, it would have been obvious to make the lid in Heyn with a tear strip separation around the lid rim where the strip is bonded and the inner

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portion of the rim is not as taught by Tupper to provide a convenient means of opening the sealed top and to create a tamper evident opening means.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 9 above, and further in view of either Collie (US 3,557,998) or Jacobson (US 3,515,334). Modified Heyn does not evidence formation of the tear strip using two perforation lines. Each of Collie and Jacobson teaches that it is known to make a tear strip using two perforation lines as opposed to one. It would have been obvious substitute a tear strip formed by two perforation lines for that in modified Heyn as taught by either Collie or Jacobson as a mere substitution of one known tear strip configuration for another and to allow easier tearing through a single layer as opposed to two layers.

***Allowable Subject Matter***

8. Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

This non-final office action is considered responsive to the communication filed 3/16/10 and consistent with the interview of 3/3/10 and is considered complete with respect to the amended claims filed in the amendment.

Any inquiry related this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below. Normal work days are Mon, Wed and Fri.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the Electronic Business Center (EBC) at (866) 217-9197 (toll free). You may also contact a USPTO Customer Service Representative or access the automated information system at 1-800-786-9199 (in USA or Canada) or 1-571-272-1000.

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